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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Part 90 of the Commission's
Rules to Provide for the Use of the
220-222 MHz Band by the Private Land
Mobile Radio Service)

PR Docket No. 89-552
RM-8506

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Implementation of Sections 3(n) and 332 of
the Communications Act)

GN Docket No. 93-252

Regulatory Treatment of Mobile Services)

Implementation of Section 309(j) of the
Communications Act -- Competitive Bidding,
220-222 MHz)

PP Docket No. 93-253

REPLY COMMENTS OF INCOM COMMUNICATIONS CORPORATION

Incom Communications Corporation ("Incomco"), by its attorneys and pursuant to §1.415 of the Commission's Rules, hereby replies to comments submitted to the Commission respecting the Notice of Proposed Rule Making portion of the Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, (PR. Docket No.89-552, GN Docket No. 93-252, PP Docket No.93-253), FCC 95-312, released August 28, 1995 in the above-referenced dockets (the "3d NPRM").

I. DEFINITION OF THE PROTECTED SERVICE AREA CONTOUR

Incomco concurs with the comments submitted in this proceeding by several other parties opposing the Commission's use of the 38 dBu contour as the protected service area of a 220-222 MHz system.¹ Restriction of the protected service area to the 38 dBu contour is inconsistent

¹ See "Comments of the American Mobile Telecommunications Association, Inc." ("AMTA's Comments") at 19-20; "Comments of Roamer One, Inc." at 5-6; "Comments of E.F. Johnson Company" at 7; "Comments of ComTech Communications, Inc." at 14;

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with the real-world propagation characteristics of the 220 MHz service and will not afford adequate protection to the Phase I incumbent licensees. Incomco supports the reply comments it understands AMTA is filing, which advocate defining the protected reliable service area of a 220-222 MHz system as the 28 dBu contour.

Use of the 28 dBu contour comports with Incomco's experiences in the field. Indeed, as previously stated in Incomco's Comments at page 3, all of the 220 MHz systems Incomco manages provide reliable signal reception at distances of at least 40 miles from the licensees' transmitter sites over 90% of the time. Incomco's customers, like other Phase I 220-222 MHz system customers, are routinely receiving reliable service well beyond the 38 dBu contour and are subscribing on the assumption that existing reliable service areas will be protected. (*See Declaration of Ron Domres attached to Incomco's Comments.*) Notably, every private field test conducted by industry experts and 220-222 MHz system operators has found much larger reliable service areas at much lower contour levels.²

"Comments of Michael R. Kelley" at 4-5.

² Intuitively, if the Commission found that empirical evidence of actual performance justified increasing the protected service area of a cellular system to the 32 dBu contour (from the 39 dBu contour as set forth in the original cellular rules), then the empirical evidence of actual performance by 220 MHz systems justifies an increase of the protected service area of a 220 MHz system to the 28 dBu contour. The Commission's initial theoretical projections as to a 220 MHz system's protected service area were made at a time when the Commission was still presuming a 39 dBu contour would equate to a reliable service area contour for UHF-band cellular. Obviously, if the Commission staff was guessing that 220 MHz would yield reliable service at a median field strength of 38 dBu at the same time that it was guessing that cellular could yield reliable service only at a median field strength of 39 dBu, the Commission conceded even then that VHF-band 220 MHz systems would provide reliable service at a lower median field strength than would UHF-band cellular. Accordingly, if cellular provides reliable service along a 32 dBu contour, 220 MHz must be providing reliable service along a contour of as low as 28 dBu.

If the Commission does not modify its rules to provide for a protected service area at the 28 dBu contour for the 220 MHz service, then the Commission will be discriminating against the 220 MHz service in favor of the cellular service. There is no apparent reason for this differing treatment of the two services.³ Such disparate treatment is contrary to the mandate of Section 6002(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), which obligates the Commission to make rules that eliminate inconsistencies between similar mobile services.

II. CONTIGUOUS CHANNEL BLOCK ASSIGNMENTS

Incomco agrees with some of the other commenters that the Commission should not assign contiguous frequencies to EA or Regional authorizations.⁴ Such a licensing scheme would be unfair to incumbent licensees and would create a chilling effect on the incumbents' participation at auction. The 220-222 MHz band local trunked operations are currently allocated on interleaved channels and the Phase I licenses are assigned and have been operating on non-contiguous frequencies. If the Commission reallocates frequencies for the Phase II auction on a contiguous basis, then Phase I licensees' ability to bid at auction will be significantly jeopardized, as they will not be able to bid on their incumbent channels. Moreover, as noted by AMTA and Securicor in their respective comments, this drastic change in frequency

³ One conceivable reason for this dissimilar treatment is that the cellular industry is a more powerful lobbying group than the 220-222 MHz industry. Another conceivable reason is that the Commission is attempting to create value for auction bidders by selling off areas already receiving reliable service from incumbents, which is an abdication of the Commission's spectrum management responsibility and a tremendous disservice to the public. Neither of these reasons would withstand judicial review.

⁴ *See* "Comments of AMTA" at 13-15; "Comments of Securicor Radiocom, Ltd." at 11-14; "Comments of Personal Communications Industry Association" at 7-8.

allocation will create a chaotic band environment, making it significantly more difficult to coordinate existing systems with new systems and making it significantly more difficult to coordinate engineering and construction of new systems to provide the requisite interference protection to existing systems.

Maintaining the current non-contiguous channel allocations for the 220-222 MHz band will better serve the public interest. If potential bidders for Phase II licenses want contiguous channels, then they should either bid on multiple non-nationwide channel blocks at auction, or else enter into agreements with nationwide licensees.⁵ Alternatively, Incomco supports the proposal it understands AMTA is making in its reply comments. Incomco understands that AMTA is proposing that the Commission eliminate use restrictions and assign the non-nationwide channels in the 171-180 MHz and 186-200 MHz bands, currently allocated for non-trunked use, on a contiguous basis. Such an allocation method would eliminate the inherent inequities to Phase I licensees and the potential for a chaotic band environment which would result from a drastic reallocation of frequencies and still afford potential Phase II bidders an opportunity to obtain contiguous channels assignments.

III. CONCLUSION

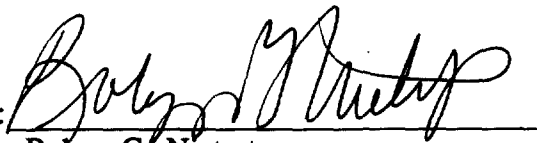
Empirical evidence of actual performance warrants increasing the protected service area for the 220-222 MHz service from the Commission's proposed 38 dBu contour to the real-world reliable service area at the lower 28 dBu contour. This increase comports with Commission precedent and complies with the mandate of the Budget Act. Additionally, Incomco concurs

⁵ Nationwide licenses, unlike local licenses, have always been allocated on a contiguous channel basis.

with several of the other commenters in this proceeding that the Commission should not drastically alter its channel allocation scheme from one of non-contiguous channels to one of contiguous channels. Any benefits from such an alteration are significantly outweighed by the inequities to the incumbent Phase I licensees and the significant potential for creation of a chaotic band environment.

Respectfully submitted,

INCOM COMMUNICATIONS
CORPORATION

By: 
Robyn G. Nietert

By: 
David J. Kaufman

October 12, 1995

Its Attorneys

Brown Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
(202) 887-0600

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CERTIFICATE OF SERVICE

I, JacLyn Freeman, a secretary in the law offices of Brown Nietert & Kaufman, Chartered, hereby certify that I have, on this 27th day of September, 1995, caused a copy of the foregoing Reply Comments of Incom Communications Corporation to be sent via first class U.S. mail this 12th day of October, 1995 to each of the following:

Chairman Reed E. Hundt*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20054

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20054

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20054

Commissioner Rachelle B. Chong*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20054

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20054

Regina Keeney, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20054

John Cimko, Jr., Chief*
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20054

Larry Atlas*
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20054

Martin D. Liebman*
Engineer
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20054

Alan R. Shark
American Mobile Telecommunications Association
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs
Gerald S. McGowan
Thomas Gutierrez
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Eliot J. Greenwald
Fisher Wayland Cooper Leader & Zaragoza
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006

Thomas J. Keller
Verner Liipfert Bernhard McPherson
& Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

William J. Franklin
William J. Franklin, Chartered
1919 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20006

Robert B. Kelly
Kelly & Povich, P.C.
Suite 300
1101 30th Street, N.W.
Washington, D.C. 20007

Henry M. Rivera
Larry S. Solomon
Gregg A. Rothschild
Ginsburg, Feldman & Bress
1250 Connecticut Ave, N.W.
Washington, D.C. 20036

Judith St. Ledger-Roty
Enrico C. Soriano
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Richard C. Dean
U.S. Central, Inc.
Lehigh Tower
East Rock Road
Allentown, PA 18103

Jeffrey L. Sheldon
UTC, The Telecommunications Association
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036

Jerome K. Blask
Gurman Blask & Freeman
1400 16th Street, N.W.
Suite 500
Washington, D.C. 20036


Jaclyn Freeman

* Via hand delivery